

House Republican Press Release

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Not a taxing, but a “taking” issue



By State Representative John J. Ryan

After a diversion last week to do some election prognosticating, we are back to our primary goal of looking at what did and did not happen in this year's General Assembly Session that concluded last month. Certainly one of the topics that generated the most noise and newsprint was the issue of eminent domain, especially because our little New England state generated national attention with the U.S. Supreme Court's decision in the Kelo case, concerning "redevelopment" in New London.

As we say in the legal business, "to refresh your recollection," Kelo was a case about eminent domain, (see 125 S.Ct. 2665 (2005) if you are in law school, or if you want all of the details!) the process by which private property is taken ('condemned' is a commonly-used term) for a public purpose. There has never been much dispute about the situation where property had to be taken as a site for a school or a police department, but in New London, the plan was for taking of residences for economic development, transferring property to a developer for new upscale uses that would generate new tax revenues for the municipality. When these situations had occurred in neighborhoods that had fallen into serious decay (the operative term is "blight"), no one much cared, but when the residents of the Fort Trumbull section of New London vigorously opposed the plan to bulldoze their homes, the litigation process started, went through the Connecticut Court system, and all the way to the U.S. Supreme Court. In the now well-known decision, the nation's top court allowed the economic development eminent domain procedure to continue and the controversy was on as we in Hartford were in the last months of last year's General Assembly Session.

Our House Republican caucus immediately proposed taking action, as House Republican leader Robert Ward outlined a legislative solution. However, that most powerful of political forces, inertia, took hold, and the legislative majority leadership cautioned that we should "study the issue carefully," not rush into a hasty solution, and take a well-reasoned approach and do something significant in the next (meaning this year's) General Assembly session. So for more than a year, legislators were inundated with position papers, letters, editorials, and every form of input imaginable. Surely the government would respond and do something?

And the reasons why action should be taken promptly were many and serious (not the least of which were those folks in New London facing the imminent loss of their homes!), as legislators met with business groups, regional associations, community and civic organizations at the beginning of this year's Session. Among the more compelling were that this was clearly a case for legislative action because the various concurring and dissenting judicial opinions made it clear that this was a public policy issue that the courts were not well equipped to decide and needed a solution; further, in the absence of a clear State legislative policy, what was to prevent each of Connecticut's 169 municipalities from adopting 169 different local ordinances on this topic?

As a knowledgeable reader, you are aware that one of the Committees I serve on is Planning & Development, and this topic is squarely within our jurisdiction, and you can guess the next part, the P & D Committee raised a number of bills for our discussion and review, many public hearings were had and input received, and drafting and revising and redrafting and..... as a result, the P & D Committee voted out a number of bills. One (that I voted for in Committee on this March 17) Senate Bill 34 would have added procedural steps for a municipality in the taking of real property, including adding requirements to a development plan, addition notification requirements, and places the burden of proof for the taking on the municipality. The bill also was referred on to the Judiciary Committee, the Appropriations Committee, and the Commerce Committee, passed in each, and made it to the Senate Calendar. Another bill with somewhat different provisions that I also voted for in P & D was substitute for House Bill 5038, that also went along in the process.

But not only did we take a shot at this topic in the P & D Committee, there were two other bills that originated in, and were voted out by the Judiciary Committee. HB 5810 took a different tack by providing for an outright elimination of the power to take property for municipal economic development projects, and specified the types of property that could be considered as deteriorated. SB 665 was another variant, banning municipalities from taking property for municipal development projects solely to increase property tax revenues. Each bill was referred through other committees, and again, I voted in favor of each when they came to our P & D Committee. Now two quick comments are needed here; first, note that we gave only the most cursory explanation of each bill, obviously, and the provisions of each are complex and detailed (and you are welcome to review the bills, or their non-partisan Office of Legislative Research (OLR) summaries on the Connecticut General Assembly website) and secondly, it is very common to have a variety of versions of legislation going through the process at the same time, so that different vehicles can be kept moving to amend into a final version. In other words, at least as a member of the P & D Committee, I was satisfied that we had done our job, creating and moving significant legislation along for action.

An editorial observation here; I had mentioned in several locations at the beginning of the session, that I would not be surprised at the end if nothing got done at all on this important topic. I always hate it when my instincts turn out to be absolutely correct in these instances, and I am certain that you will not be surprised to learn that not a single one of these bills I have mentioned was ever called for a vote on the Floor of the

House or Senate! And when that was becoming apparent as this year's Session was winding down, in an effort by our House Republican caucus to get something done on this very important issue, an amendment was called when we took up bill HB 5605; you can look up the amendment as proposed Schedule B on that bill; an amendment which would have addressed the eminent domain topic, as LCO 5698, and you can note the amendment was killed as 'not germane.' Despite the fact that every survey I have seen indicates that this is a topic that is of extreme concern to the public, in the end no significant legislation was even called on the Senate or House floor. And if you reviewed an editorial on May 25 in one of our local dailies ("Inaction on eminent domain may hurt") are you informed about any of the bills proposed, and what happened to them and why? No, you only have the lame comment that "two General Assembly sessions have since passed with no decisive action," which in my view, does not tell you a lot.

In other words, the General Assembly fiddled while a New London neighborhood is about to be bulldozed.

Please feel free to contact me with your concerns and issues. As your state representative, it is my job, and my priority to represent you and to make sure that your needs and concerns are addressed at the capitol. You can write to me at Room 4200, Legislative Office Building, Hartford, CT 06106-1591, send me e-mail at John.Ryan@housegop.ct.gov or call my office toll-free at 1-800-842-1423.